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OPINION No. 29/2006 (UNITED STATES OF AMERICA)

Communication: addressed to the Government on 8 December 2005

Concerning: the case of Mr. Ibn Al-Shaykh al-Libi and 25 other persons

The State is party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified by resolution 1997/50 and extended by resolution 2003/31. The Human Rights Council assumed the mandate by its decision 2006/102. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government did not provide it, despite repeated invitation to this effect, with the requested information. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

- I. When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (Category I);
- II. When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);
- III. When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (Category III).

4. The source submitted to the Working Group a list containing the names and some other particulars of altogether 26 persons, who are being held in detention either in the United States of America or in other countries in the context of the so-called war on terror. According to the source they all are suspected of involvement in terrorist plots led by al-Qaida or other terrorist organisations. It is further contended that they are held in unknown secret detention facilities (the so-called *black sites*). According to the source they are deprived of the enjoyment of the requisite safeguards against arbitrary detention and their basic human rights are in jeopardy. The source holds that the United States authorities are responsible for the arbitrary detentions irrespective of their factual place of detention, because they all have been arrested or captured in the US led war against international terrorism. Many of them had been kept in facilities ran by the United States secret services, or have been transferred,

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often by secretly run flights to the detention centres of countries, with which the US authorities co-operate in their fight against international terrorism.

5. Upon reception of the communication the Working Group noted that the communication as submitted fails to meet the requirements of Rule 10 of its methods of work which reads as follows:

"10. As far as possible, each case shall form the subject of a presentation indicating family name, first name and any other information making it possible to identify the person detained, as well as the latter's legal status, particularly:

- (a) The date and place of the arrest or detention or of any other form of deprivation of liberty and the identity of those presumed to have carried them out, together with any other information shedding light on the circumstances in which the person was deprived of liberty;
- (b) The reasons given by the authorities for the arrest and/or the deprivation of liberty;
- (c) The legislation applied in the case;
- (d) The action taken, including investigatory action or the exercise of internal remedies, in terms of both approaches to the administrative and judicial authorities, particularly for verification of the measure of deprivation of liberty, and steps at the international or regional levels, as appropriate, the results of such action or the reasons why such measures were ineffective or were not taken; and
- (e) An account of the reasons why the deprivation of liberty is deemed arbitrary."

The source informed the Working Group that it was unable to provide fuller data about the detainees. It pointed out that just because of the secrecy, surrounding *black sites* - which is one of the principal item of its complaint - the strict application of the rules would be tantamount to hamper the submission of this and similar complaints and would thereby reward States conducting secret rendition practice.

6. The Chairman-Rapporteur of the Working Group forwarded a summary of the communication to the Permanent Representative of the United States of America to the United Nations Office at Geneva on 8 December 2005 (paras. 7 to 18 below).

7. According to the allegations received, some of these secret detention facilities, located outside territories under United States jurisdiction, are administered by agents of the United States Central Intelligence Agency (CIA), who are applying CIA's approved enhanced or harshest interrogation techniques, which are allegedly contrary to international conventions and even to the United States military law. They include tactics such as "water-boarding", in which a detainee is made to believe he or she is drowning.

8. It was also reported that the United States intelligence services have also ships some detainees to countries that use interrogation techniques to extract confessions harsher than any authorized for use by United States intelligence officers. These detainees were not necessarily citizens of those nations. Secret jails in these countries

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are operated by the host nations, with CIA financial assistance and, sometimes, direction.

9. It was further reported that those detainees were taken from one country to another country on flights which have duration of three to eight hours, stayed there for periods ranging from 18 months to more than 2 years, and transferred again to a third country. Some of the detainees were moved from Afghanistan and Middle East countries to Eastern Europe in a small fleet of private jets used by the CIA.

10. Allegations were also received regarding the existence of a related system of secretly returning prisoners to their home country when they have outlived their usefulness to the United States. Algerians, Chinese nationals, Egyptians, Jordanians, Moroccans, Pakistanis, Saudis, Tunisians and Uzbekistanis were reportedly returned to their countries' intelligence services after initial debriefing by United States intelligence officers.

11. The transfer practice, also known as "rendition" or "extraordinary rendition", is supposed to be a counter-terrorism technique. Detainees are held in order to continue detention and interrogation, and to exchange information with foreign intelligence agents conducting the interrogations.

12. Some of these detention centres were located in former Soviet air or military bases. Former detainees held in these secret detention facilities relate that they were not formally charged of any crime, nor brought before any authority, administrative or judicial, responsible for their detention to contest the legality of it. They were held in *incommunicado* detention, not having access to the outside world and could not access neither their families -who have had no idea of their whereabouts- nor defence lawyers. They were not allowed to speak to no one but the interrogators. They were also forced to listen to loud music day and night. Some detainees were kept in dark and underground cells.

13. Concern was expressed that these transfers occur outside the confines of any legal procedure, such as deportation or extradition, and do not allow access to counsel or to any judicial body to contest the transfer.

14. According to the information received by the Working Group, many of the detainees listed below are being held in secret prisons or "*blacksites*" located outside territories under the jurisdiction of the United States of America. Many of them are suspected of involvement in serious crimes, including the 11 September 2001 attacks; the 1998 United States Embassy bombings in Kenya and Tanzania, and the 2002 bombing at two nightclubs in Bali, Indonesia. Yet none on this list has been arraigned or criminally charged, and United States Government officials have reportedly suggested that some detainees have been tortured or seriously mistreated in custody.

15. The current location of these prisoners is unknown. The list of persons in detention is the following:

- Mr. Ibn Al-Shaykh al-Libi . Reportedly arrested on 11 November 2001 in Pakistan. Libyan, suspected commander at al-Qaeda training camp.

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- Mr. Abu Faisal. Reportedly arrested on 12 December 2001. Nationality unknown.
- Mr. Abdul Aziz. Reportedly arrested on 14 December 14 2001. Nationality unknown. In early January 2001, Kenton Keith, a spokesman at the U.S. Embassy in Islamabad, produced a chart with the names of senior al-Qaida members listed as killed in action, detained, or on the run. Faisal and Aziz were listed as detained on 12 and 14 December 2001.
- Mr. Abu Zubaydah (also known as Zain al-Abidin Muhahhad Husain). Reportedly arrested in March 2002 in Faisalabad, Pakistan. Palestinian; born in Saudi Arabia; suspected senior al-Qaida operational planner. The source adds that this system of secret prisons began with the transfer of Mr. Abu Zubaydah from Pakistan to Thailand, where he was housed in a small disused warehouse in an active airbase. After treatment there for gunshot wounds by a CIA doctor especially sent from the CIA headquarters to assure Mr. Zubaydah was given proper care, he was slapped, grabbed, made to stand long hours in a cold cell and finally handcuffed and strapped feet up to a water board until after 31 seconds he begged for mercy and began to cooperate.
- Mr. Abdul Rahim al-Sharqawi (alias Riyadh the facilitator). Reportedly arrested in January 2002. Possibly Yemeni, suspected al-Qaida member (possibly kept previously in Guantánamo).
- Mr. Abd al-Hadi al-Iraqi. Reportedly arrested in January 2002. Nationality unknown, presumably Iraqi. Suspected commander of an al-Qaida training camp.
- Mr. Muhammed al-Darbi. Reportedly arrested in August 2002. Yemeni, suspected al-Qaida member. On 26 December 2002, citing "U.S. intelligence and national security officials," the Washington Post reports that al-Darbi, as well as Ramzi Binalshibh [see below], Omar al-Faruq [reportedly escaped from U.S. custody in July 2005], and Abd al-Rahim al-Nashiri [see below] all "remain under CIA control."
- Mr. Ramzi bin al-Shibh. Reportedly arrested on 13 September 2002. Yemeni. Suspected al-Qaida conspirator in September 11 attacks (former roommate of one of the hijackers). Mr. Ramzi Binalshibh was captured in Pakistan and flown to Thailand.
- Mr. Abd al-Rahim al-Nashiri (or Abdulrahim Mohammad Abda al-Nasherii), (alias Abu Bilal al-Makki or Mullah Ahmad Belal). Reportedly arrested in November 2002 in the United Arab Emirates. Saudi or Yemeni. Suspected al-Qaida chief of operations in the Persian Gulf, and suspected planner of the USS Cole bombing and of the attack on the French oil tanker, Limburg.
- Mr. Mohammed Omar Abdel-Rahman (alias Asadullah). Reportedly arrested in February 2003 in Quetta, Pakistan. Egyptian, son of the Sheikh Omar Abdel-Rahman, who was convicted in the United States of involvement in terrorist plots in New York. See Agence France Presse, 4 March 2003: "Pakistani and US agents captured the son of blind Egyptian cleric Omar Abdel Rahman. . . a US official said Tuesday. Muhammad Abdel Rahman was arrested in Quetta, Pakistan, the official said,

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speaking on condition of anonymity." David Johnston, New York Times, 4 March 2003: "On February 13, when Pakistani authorities raided an apartment in Quetta, they got the break they needed. They had hoped to find Mr. [Khalid Sheikh] Mohammed, but he had fled the apartment, eluding the authorities, as he had on numerous occasions. Instead, they found and arrested Muhammad Abdel Rahman, a son of Sheik Omar Abdel Rahman, the blind Egyptian cleric. . ."

- Mr. Mustafa al-Hawsawi (alias al-Hisawi). Reportedly arrested on 1 March 2003 (together with Khalid Sheikh Mohammad) in Pakistan. Saudi. Suspected al-Qaida financier.

- Mr. Khalid Sheikh Mohammed. Reportedly arrested on 1 March 2003 in Rawalpindi, Pakistan. Kuwaiti (Pakistani parents). Suspected al-Qaida member; alleged to have masterminded September 11 attacks; the killing of Daniel Pearl and the USS Cole attack in 2000.

- Mr. Majid Khan. Reportedly arrested on March-April 2003 in Pakistan. Pakistani. Alleged link to Khalid Sheikh Mohammad; alleged involvement in a plot to blow up gas stations in the United States. Details about Khan's arrest were revealed in several media reports, especially in Newsweek: Evan Thomas, "Al Qaeda in America: The Enemy Within," Newsweek, 23 June 2003. U.S. prosecutors provided evidence that Majid Khan was in U.S. custody during the trial of 24-year-old Uzair Paracha, who was convicted in November 2005 of conspiracy charges, and of providing material support to terrorist organizations.

- Mr. Yassir al-Jazeeri (alias al-Jaziri). Reportedly arrested on 15 March 2003 in Pakistan. Possibly Moroccan, Algerian, or Palestinian. Suspected al-Qaida member; linked to Khalid Sheikh Mohammed. Details of arrest reported: Alex Spillius, "FBI Questions al-Qaida Man in Pakistan," Daily Telegraph, 17 March 2003; Paul Haven, "Al-Qaida suspect begins cooperating with authorities, Pakistani security officials say," Associated Press, 17 March 2003.

- Mr. AH Abdul Aziz AH (alias Ammar al Baluchi). Reportedly arrested on 29 April 2003 in Karachi, Pakistan. Pakistani. He is alleged to have funneled money to September 11 hijackers, and alleged to have been involved with the Jakarta Marriott bombing and in handling Jose Padilla's travel to the United States. U.S. Judge Sidney Stein ruled that defense attorneys for Uzair Paracha could introduce statements Baluchi made to U.S. interrogators, proving that he was in U.S. custody. Former Deputy Attorney General James Comey also mentioned Baluchi during remarks to the media about the case of Jose Padilla on 1 June 2004.

- Mr. Waleed Mohammed bin Attash (alias Tawfiq bin Attash or Tawfiq Attash Khallad). Reportedly arrested on 29 April 2003 in Karachi, Pakistan. Saudi (of Yemeni descent). Suspected of involvement in the bombing of the USS Cole in 2000, and the September 11 attacks. See Afzal Nadeem, "Pakistan Arrests Six Terror Suspects, including Planner of September 11 and USS Cole Bombing," Associated Press, 30 April 2003. His brother, Hassan Bin Attash, is reportedly held in Guantánamo. President Bush described his arrest as a "major, significant find" in the war against terrorism: "He's a killer. He was one of the top al-Qaida operatives. . . . He was right below Khalid Shaikh Mohammad on the organizational chart of al-

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Qaida. He is one less person that people who love freedom have to worry about." David Ensor and Syed Mohsin Naqvi, "Bush Hails Capture of Top al Qaeda Operative," CNN.com, 1 May 2003.

- Mr. Adil al-Jazeeri. Reportedly arrested on 17 June 2003 outside Peshawar, Pakistan. Algerian, suspected al-Qaida and longtime resident of Afghanistan; alleged "leading member" and "longtime aide to bin Laden." (Previously kept in Guantanamo).
- Mr. Hambali (alias Riduan Isamuddin). Reportedly arrested on 11 August 2003 in Thailand. Indonesian; allegedly involved in Jemaah Islamiyah and al-Qaida; alleged involvement in organizing and financing the Bali nightclub bombings, the Jakarta Marriot Hotel bombing, and preparations for the September 11 attacks.
- Mr. Mohamad Nazir bin Lep (alias Lillie, or Li-Li). Reportedly arrested in August 2003 in Bangkok, Thailand. Malaysian, Alleged link to Hambali.
- Mr. Mohamad Farik Amin (alias Zubair). Reportedly arrested in June 2003 in Thailand. Malaysian; alleged link to Hambali. For more information on the arrest of Mohammad Farik Amin and Mohamad Nazir bin Lep, see: Kimina Lyall, "Hambali Talks Under Grilling-Slaughter of Innocents," The Australian, 21 August 2003; Kimina Lyall, "Hambali Moved JI Front Line to Bangladesh, Pakistan," The Weekend Australian, 27 September 2003; Simon Elegant and Andrew Perrin, "Asia's Terror Threat," Time Asia Magazine, 6 October 2003; Simon Elegant, "The Terrorist Talks," Time, 13 October 2003.
- Mr. Tariq Mahmood. Reportedly arrested in October 2003 in Islamabad, Pakistan. Dual British and Pakistani nationality. Alleged to have ties to al-Qaida. See "Pakistan grills detained British al-Qaeda suspect," Agence-France Presse, 10 November 2005; Sean O'Neill, "Five still held without help or hope; Guantanamo," The Times, 12 January 2005.
- Mr. Hassan Ghul. Reportedly arrested on 23 January 2004, in Kurdish highlands, Iraq. Pakistani; alleged to be Zarqawi's courier to bin Laden; alleged ties to Khalid Sheikh Mohammad. President Bush described Hassan Ghul's arrest on 26 January 2004, in comments to the press, Little Rock, Arkansas: "Just last week we made further progress in making America more secure when a fellow named Hassan Ghul was captured in Iraq. Hassan Ghul reported directly to Khalid Sheikh Mohammad, who was the mastermind of the September 11 attacks. . . . He was captured in Iraq, where he was helping al Qaeda to put pressure on our troops."
- Mr. Musaad Aruchi (alias Musab al-Baluchi, al-Balochi, al-Baloshi). Reportedly arrested in Karachi on 12 June 2004 in a "CIA-supervised" operation. Presumably Pakistani. Pakistani intelligence officials told journalists Aruchi was held by Pakistani authorities at an airbase for three days, before being handed over to the United States and then flown in an unmarked CIA plane to an undisclosed location. Anwar Iqbal, "Pakistan Hands Over 1998 Bomber to US," United Press International, 3 August 2004. See also Zahid Hussain, "Pakistan Intensifies Effort Against al Qaeda," The Asian Wall Street Journal, 5 August 2004; Bill Powell, "Target: America," Time Magazine, 16 August 2004, Vol. 164, Issue 7; "Pakistani Aides: Al-

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Qaida Arrest in June Opened Leads," Dow Jones International News, 3 August 2004; "CIA-supervised arrest in Pak opened valuable leads: Report," The Press Trust of India, 3 August 2004.

- Mr. Mohammed Naeem Noor Khan (aka Abu Talaha). Reportedly arrested on 13 July 2004 in Pakistan. Pakistani, computer engineer, was held by Pakistani authorities, and likely transferred to U.S. custody. See Douglas Jehl and David Rohde, "Captured Qaeda Figure Led Way to Information behind Warning," New York Times, 2 August 2004. Kamran Khan, "Al Qaeda Arrest In June Opened Valuable Leads," Washington Post, 3 August 2004; Kamran Khan and Dana Priest, "Pakistan Pressures Al Qaeda; Military Operation Results In Terror Alert and Arrests," Washington Post, 5 August 2004; "Pakistan questioning almost 20 Al-Qaeda suspects," Agence-France Presse, 5 August 2005; Robert Block and Gary Fields, "Al Qaeda's Data on U.S. Targets Aren't New: Surveillance of Listed Sites In Eastern Cities Took Place Over Time, Perhaps Years," The Asian Wall Street Journal, 7 August 2004; Adrian Levy and Cathy Scott-Clark, "One Huge U.S. Jail," The Guardian, 19 March 2005.

- Mr. Ahmed Khalfan Ghailani. Reportedly arrested on 24 July 2004 in Pakistan. Tanzanian. Reportedly indicted in the United States for 1998 embassy bombings. U.S. and Pakistani intelligence officials told UPI that Ghailani was transferred to "CIA custody" in early August. See Anwar Iqbal, "Pakistan Hands Over 1998 Bomber to US," United Press International, 3 August 2004. Pakistani security officials told AFP and Reuters in January 2005, that Ghailani was handed over to the United States "several months ago." See e.g., "Pakistan hands Tanzanian Al-Qaeda bombing suspect to US," Agence France Presse, 25 January 2005.

- Mr. Abu Faraj al-Libi. Reportedly arrested on 4 May 2005, in North Western Frontier Province, Pakistan. Libyan, suspected al-Qaida leader of operations; alleged mastermind of two assassination attempts on Musharraf. Col. James Yonts, a U.S. military spokesman in Afghanistan, "said in an email to The Associated Press that al-Libbi was taken directly from Pakistan to the U.S. and was not brought to Afghanistan."

16. It was reported that this alleged hidden global internment network is a central element in the CIA's unconventional war on global terrorism. It depends on the cooperation of foreign intelligence services. Concern was expressed that the existence of these secret sites of detention where no legal control or human rights protection can be exercised, facilitates avoiding the international obligations and responsibilities of the Governments who are running them. It is also well known that secret detention without any legal control augments for the detainee the practice of torture and other cruel, inhuman or degrading treatment especially when under interrogation.

17. It was alleged that the pattern of this type of arbitrary deprivation of liberty, lacking any legal basis, is against international human rights law and implies more gross violations of detainees rights: forced disappearance; lack of access to lawyers, families, doctors; to have families informed of place of arrest and detention; the right to be free from torture and cruel, inhuman or degrading treatment, which are against the standards of international law.

18. It was further stressed that detaining terrorist suspects under such conditions, without charging them and without the prospect of a trial in which their guilt or innocence will eventually be established, is in itself a serious denial of their basic human rights and is incompatible with both International Humanitarian Law and Human Rights Law.

19. The Working Group requested the Government to provide, within 90 days, relevant information concerning the allegations of the source in respect of both, the facts and the applicable legislation. Since no reply arrived within the imparted deadline, the Secretariat of the Working Group sent out a reminder on 7 April 2006. The Permanent Representation, in a note dated 8 May 2006 promised a response to the Working Group as soon as it will be able to provide a more complete response. Since no response arrived, the Working Group informed the Government that the Working Group will consider this case during its 46th session between 28 August and 1 September 2006. No reaction arrived to this information, either.

20. The lack of co-operation of the authorities may not prevent the Working Group to take an Opinion. It had to rely on the information provided by the source. The information is consistent to the extent, which is possible under the circumstances, and is corroborated by other information coming from independent and reliable sources, first of all from non-governmental organisations. Not even the United States authorities deny the practice of rendition and the running of secret detention facilities in the United States and abroad. The US Secretary of State herself was quoted as saying that many extremely dangerous terrorists possess information that may save lives, perhaps even thousands of lives; therefore rendition of such terrorists may be a vital tool in combating transnational terrorism.

21. The detention of the 26 aforementioned individuals falls outside of all national and international legal regimes pertaining to the safeguards against arbitrary detention. In addition the secrecy surrounding the detention and the interstate transfer of suspected terrorists may expose the persons affected to torture, forced disappearance, extra-judicial killing and in case they are prosecuted against, to the lack of the guarantees of a fair trial.

22. In the light of the foregoing the Working Group renders the following opinion.

The deprivation of liberty of Ibn Al-Shaykh al-Libi, Abu Faisal, Abdul Aziz, Abu Zubaydah (also known as Zain al-Abidin Muhahhad Husain), Abdul Rahim al-Sharqawi (alias Riyadh the facilitator, Abd al-Hadi al-Iraqi, Muhammed al-Darbi, Ramzi bin al-Shibh, Abd al-Rahim al-Nashiri (or Abdulrahim Mohammad Abda al-Nasherii) (alias Abu Bilal al-Makki or Mullah Ahmad Befal), Mohammed Omar Abdel-Rahman (alias Asadullah), Mustafa al-Hawsawi (alias al-Hisawi), Khalid Sheikh Mohammed, Majid Khan, Yassir al-Jazeeri (alias al-Jaziri), Ali Abdul Aziz Ali (alias Ammar al Baluchi), Waleed Mohammed bin Attash (alias Tawfiq bin Attash or Tawfiq Attash Khallad), Adil al-Jazeeri, Hambali (alias Riduan Isamuddin), Mohamad Nazir bin Lep (alias Lillie, or Li-Li), Mohamad Farik Amin (alias Zubair), Tariq Mahmood, Hassan Ghul, Musaad Aruchi (alias Musab al-Baluchi, al-Balochi, al-Baloshi), Mohammed Naeem Noor Khan

(aka Abu Talaha) Ahmed Khalfan Ghailani and Abu Faraj al-Libi is arbitrary being in contravention of Article 9 of the International Covenant on Civil and Political Rights and falls under category I of the categories applicable to the consideration of cases submitted to the Working Group.

23. Consequent upon the opinion rendered the Working Group requests the Government to take the necessary steps to remedy the situation of the aforementioned persons.

Adopted on 1 September 2006.